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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,364	10/14/2003	Douglas Edward Wochler	C283.101.102	4382
25281 7590 02/02/2007 DICKE, BILLIG & CZAJA, P.L.L.C. FIFTH STREET TOWERS 100 SOUTH FIFTH STREET, SUITE 2250 MINNEAPOLIS, MN 55402			EXAMINER PIPALA, EDWARD J	
			ART UNIT 3663	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			02/02/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/685,364	WOEHLER, DOUGLAS EDWARD	
	<b>Examiner</b>	<b>Art Unit</b>	
	Edward Pipala	3663	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 October 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15,30-46 and 60-63 is/are pending in the application.
- 4a) Of the above claim(s) 16-29 and 47-59 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15,30-46 and 60-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This Office action is in response to Applicant's amendments and remarks filed 10/17/06.

Claims 16-29 and 47-59 are withdrawn as being drawn to a non-elected invention. Claims 1-15 and 30-46 remain, with claims 1 and 32 being amended. New claims 60-63 have been added by this amendment, accordingly claims 1-15, 30-46 and 60-63 are presently pending.

### ***Claim Objections***

2. Claims 3 and 32 are again objected to because of the following informalities: because in line 4 of each of claims 3 and 32 the word "closest" is misspelled. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4-11 and 30-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, line 3, as well as in claim 30, lines 3 and 8, Applicant still recites the phrase "adapted to", even though this phraseology has been amended to read "configured to" in presently amended claim 1, line 8.

Art Unit: 3663

Applicant's statements of intended use or field of use such as "adapted to" clauses are essentially method limitations or statements of intended or desired use. Thus, these claims as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See In re Pearson, 181 USPQ 641; In re Yanush, 177 USPQ 705; In re Finsterwalder, 168 USPQ 530; In re Casey, 512 USPQ 235; In re Otto, 136 USPQ 458; Ex parte Masham, 2 USPQ 2nd 1647.

See MPEP § 2114 which states:

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ 2nd 1647

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. In re Danly, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3663

Claims 1-15, 30-46 and 60-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mallet et al. (6,920,390) in view of Runnels (4,527,158) and Giannopoulos et al. (2003/0125868).

Each of independent claims 1, 30 and 60 recite a location (and identification) system comprising a location transmitter having a physical location code which is communicated by an optical signal and a location identifier having an object identification code and configured to transmit an object identification signal and the location code. The embodiment of claim 1 is simply that of a ground surface location and identification system, whereas that of claim 30 additionally recites an embodiment encompassing an airfield ground surface location system in which a vehicle code is transmitted as the object identification data. New claim 60 closes by reciting the position and identification aspects as part of a "surface movement control system".

Mallet et al. disclose a surface traffic movement system in which SMART Board surface displays are used to provide route guidance instructions to aircraft at ramp and taxiway intersections, and which confirm to the pilot that their aircraft is at the correct location. Further, in column 2 under the heading of Summary Of the Invention Mallet et al. also disclose that for vehicles equipped with digital message signaling devices that the send/receive transceiver associated with the SMART Board is capable of receiving a vehicle signal and conveying it to an air traffic control tower as well as the use of a unique location code generated by the system and visible on the message boards only at the specified locations. Mallet et al., does not disclose doing so solely by means of the optical signal, nor that the location code is included in the optical communication.

Runnels discloses an aircraft collision pilot warning indicating system in which a beacon having a plurality of light detectors may be used as a transmitter and receiver using the visible or infrared spectrum, and which operates in a passive and semi-cooperative manner to detect light radiations emitted by other nearby aircraft (col. 1, ll. 18-39).

Giannopoulos et al. disclose a navigation system in which light sources throughout a building, where section [0025] particularly discloses encoding a unique code which is transmitted by the modulated light source and that such an interface may also include a data port or a wireless interface using infrared or radio frequencies. Section [0015] thereof further suggests and embodiment of this positioning system for providing navigation instruction to a user within a mall, hotel or airport.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have implemented the teachings of Runnels and Giannopoulos et al. within the context of the surface traffic movement system of Mallet et al., since all are in the field of light based location or position determination as well as in the field of aircraft collision avoidance and guidance, and because using optical or infrared communication does not interfere with the other numerous radio frequencies being used in an aircraft/airfield environment.

With respect to claims 2 and 31, which recite the use of a plurality of location transmitters with each having a corresponding physical location code, please see either



Art Unit: 3663

of Mallet et al. or Giannopoulos et al. which disclose the use of a plurality of such SMART Boards and lighting fixtures, respectively.

With respect to claims 3-6, 11-15, 32-35 and 42-46 relating to closest proximity, the use of a light source and encoder, the use of an LED array or laser diode, receipt/transmission and processing of location code signals, the use of a plurality of optical sensors, and display of location within a coverage area, please also see col. 3, ll. 45-50, col. 4, ll. 1-22, col. 6, ll. 13-65, col. 7, ll. 3-30, col. 8, ll. 61-67, col. 9, ll. 26-49, Mallet et al., col. 1, ll. 18-41, col. 3, ll. 28-34, col. 6, ll. 35-68 of Runnels, as well as section [0030] of Giannopoulos et al.

With respect to remaining dependent claims 7-10 and 36-41 relating to power switches, microcontrollers, particular coding schemes, tail number and flight number identification, please see Runnels for the particulars of controlling the optical emitters, etc., and in particular col. 6, ll. 30-65 and col. 9, ll. 34-43 which teach that the SMART Board system keeps track of aircraft movement and routes by aircraft ID.

With respect to newly added claims 60-63, please note that the above combination of Mallet et al., Runnels and Giannopoulos et al. are part of a airport surface movement control system used to direct aircraft along the runways, taxiways and to the gates and other locations with respect to individual aircraft and flights.

### ***Response to Arguments***

4. Applicant's arguments filed 10/17/06 have been fully considered but they are not persuasive because applicant seems to have argued each of the prior art references

Art Unit: 3663

used in the rejection under 35 U.S.C. 103 individually instead of what they taught as a whole.

In response to Applicant's argument that neither of Mallet et al., Runnels and Giannopoulos et al. alone teach or suggest the combination of independent claims 1, 30 or 60, Applicant is reminded that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

As indicated above with respect to each of Mallet et al., Runnels and Giannopoulos et al., they are all found within the field of ground based airport/aircraft communication.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any



Art Unit: 3663

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Pipala whose telephone number is 571-272-1360. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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